IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-09-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

W.A.NOs.3311, 3386 OF 2004
AND
WAMP.Nos.6250, 6251, 6837, 6353 of 2004

W.A.No.3311 of 2004

S. Vijayashankar
Minor, rep. by his Father
and Natural Guardian
K. Sandirakasu .. Appellant

Vs.

1. The Director General of Health Services, New Delhi.

2. The Director, Jawaharalal Institute of Post Graduate Medical Education and Research, Pondicherry.

3. The Government of Pondicherry, rep. by Collector, Revenue Department, Pondicherry.

4. Arul Prakash Pandian,J.
5. B. Priayavadahana
6. Anjani Nandan Vaddi
7. P. Shoba Rani
8. B. Sahithya
9. P. Shakthi
10. P. Satheesh
11. K. Elayavendhan
12. B.S. Arasu .. Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

W.A.No.3386 of 2004

K. Sandirakasu
S/o.A. Kannaiyan
No.15, Chitra Colony,
Surakudi, Karaikal .. Appellant

Vs.

1. The Director General of Health
Services, New Delhi.

2. The Director, Jawaharalal Institute
of Post Graduate Medical Education
and Research, Pondicherry.

3. The Government of Ponjdicherry,
rep. by Collector,
Revenue Department,
Pondicherry. .. Respondents

W.A.No.3311 of 2004 is filed under Clause 15 of Letters of Patent against the order of the learned single Judge in W.P.No.15652/2004 dated 12.8.2004 for setting aside the same and to allow the writ petition.

W.A.No.3386 of 2004 is filed under Clause 15 of Letters of Patent against the order of the learned single Judge in W.P.No.9740/2004 dated 12.8.2004 for setting aside the same and to allow the writ petition.

For Appellant
in WA.NOs.3311 & 3386 of 2004 : Mr.V. Ajayakumar

For Respondents 1-2 in WA.Nos.3311 & 3386 of 2004 : Mr.V.T. Gopalan
Addl. Solicitor General for
Mr.M.T. Arunan, ACGSC

For Respondent-3 in WA.3311 &3386/04 : Mr.T. Murugesan
Govt. Pleader (Pondicherry)
Respondent-4 : Mr.T. Eswaradhas
Respondent-5 : Mrs. Sudha Ramalingam
Respondent-6 : Mrs. Radha Gopalan
Respondent-8
in WA.NO.3311/04: Mr.A. Sasidharan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

COMMON JUDGMENT

P.K. MISRA, J

The appellant in W.A.No.3386 of 2004 had filed W.P.No.9740 of 2004 for quashing the prospectus for admission to M.B.B.S. Course for the academic year 2004-2005 in Jawaharlal Institute of Post Graduate Medical Education and Research, Pondicherry (hereinafter referred to as "JIPMER").

His Minor son S. Vijayashankar, had filed W.P.No.15652 of 2004 for issuing certiorarified mandamus challenging the selection of respondents 4 to 12 in respect of the quota meant for Scheduled Caste candidates of Pondicherry and consequently direct admission of the petitioner to 1st year of M.B.B.S. Course for the academic year 2004-2005 in JIPMER. W.A.No.3311 of 2004 has been filed by such petitioner.

2. JIPMER is an Institute financed and administered by the Ministry of Health and Family Welfare, Government of India through the Directorate General of Health Services, New Delhi. Such Institute is affiliated to the Pondicherry University and provides instruction for MBBS Course. As per Clause 3.1 of the prospectus for the year 2004-2005, 75 seats were available for admission. Such seats were distributed as under :-

" (a)	Open General	14
(b)	Open Scheduled Caste	8
(c)	Open Scheduled Tribe	4
(d)	Pondicherry General	15
(e)	Pondicherry Scheduled caste	5
(f)	Seats to be filled on the basis of Common All India Entrance Test by CBSE	11
(g)	Government of India nomination subject to fulfilment of basic requirements laid down, vide para 2.1, 2.2 and 2.3	18
	Total	75"

WEB COPY

3. The questions raised in these writ appeals relate to 5 seats under Clause 3.1(e), namely, Pondicherry Scheduled Caste. Clause 3.5.1 is to the following effect :-

"3.5.1 Definition of Pondicherry Union Territory Residents: The 20 Seats reserved for Pondicherry General and Pondicherry Scheduled Caste are open to applicants

https://hcservices.ecourts.gov.in/hcservices/

who are Pondicherry Residents provided he/she is an Indian National and satisfies either of the following two criteria:

(a) Those candidates / their parents residing continuously in the Union Territory of Ponidcherry for at least five years immediately preceding the date of application.

(b) Children of Central/State Government Servants, including employees of Public Sector undertaking under the Central/State Government posted and serving in the Union Territory of Pondicherry for at least a minimum period of ONE year prior to the last date for submission of application."

4. The controversy relating to 5 seats of Pondicherry Scheduled Caste is to the effect that as per the appellants in W.A.No.3311 and 3386 of 2004, while considering the eligibility, the candidates who are Scheduled Caste in accordance with the Notification issued by the President under Article 341 of the Constitution in respect of Pondicherry Union Territory should alone be considered as eligible and the candidates who are Scheduled Caste as per the Presidential Notification in respect of other States and have migrated to Pondicherry should not be considered as eligible under such category, though such candidates would be eligible under Clause 3.1 (b), namely, Open Scheduled caste. According to the learned Counsel appearing for the appellant in W.A.Nos.3311 and 3386 of 2004, is to the effect that since provision has been made for Open Scheduled Caste candidates belonging to any part of the country, under which migrant Scheduled Caste candidates can be considered, it is highly arbitrary and illegal to consider such migrant Scheduled Caste candidates, for the category meant for Pondicherry Scheduled Caste candidates. According to him, as decided by the Supreme Court in MARRI CHANDRA SHEKHAR RAO v. DEAN, SETH G.S. MEDICAL COLLEGE AND OTHERS {(1990) 3 SCC 130}, which has been followed in ACTION COMMITTEE ON ISSUE OF CASTE CERTIFICATE TO SCHEDULED CASTES AND SCHEDULED TRIBES IN THE STATE OF MAHARASHTRA AND ANOTHER v. UNION OF INDIA AND ANOTHER {(1994) 5 SCC 244}, only the candidates of Pondicherry origin, who are included in the notification issued by the President as Scheduled Caste for Union Territory of Pondicherry, should be considered eligible.

5. Learned Additional Solicitor General appearing for the respondents has submitted that the Institute has been established by the Central Government. Following the consistent policy in such matters, reservation has been made in respect of Scheduled Caste candidates belonging to any State or Union Territory throughout India. Such candidates have been made eligible for being considered under "Open Scheduled Caste". He has further submitted

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the Institute has been established within Pondicherry, as a special concession 20 seats have been set apart for the local candidates out of which 15 seats have been set apart for Pondicherry General candidates and 5 seats have been set apart for Pondicherry Scheduled Caste. For the aforesaid purpose, as per the prospectus those candidates/their parents residing continuously in the Union Territory of Pondihcerry for at least five years immediately preceding the date of application are eligible. Similarly, the children of Central/State Government Servants, including employees of Public Sector undertaking under the Central/State Government posted and serving in the Union Territory of Pondicherry for at least a minimum period of one year prior to the last date of the application are eligible. He has submitted that a similar question had been raised earlier and the Madras High Court had already upheld the validity of such arrangement in the decision reported in 2000 Writ L.R. 496 (PUVVALA SUJATHA v. UNION OF INDIA & OTHERS).

6. Mr.Ajaya Kumar has placed strong reliance upon Marri Chandra Shekar Rao's case and Action Committee's case. The first case related to a person who was considered to be a Scheduled Tribe as per the Presidential Notification relatable to Andhra Pradesh. Such candidate and his father had migrated to Maharashtra. However, the Tribe to which he belonged was not included in the Presidential notification as a Scheduled Tribe for Maharashtra, and therefore, such candidate was not given the privilege of reservation as a Scheduled Tribe candidate for admission to college within Maharashtra. The Supreme Court negatived the plea of such candidate by holding that a candidate belonging to Scheduled Tribe in a particular State is entitled to claim privilege for admission to college in his parents' State but he is not entitled to claim any such privilege if he migrates to another State. The question as well as the answer in the Action Committee's case was almost similar.

7. In our opinion, the ratio of the aforesaid two decisions of the Supreme Court is not applicable to the present case. In the present case, the question is not in relation to admission to a college coming under the control of any State or even Union Territory. As already indicated, the Institute has been established by the Central Government.

8. The principle adopted in the Prospectus is in consonance with the principle adopted for employment under the Central Government, wherein the benefit/privilege of reservation is open to all persons who are declared to be Scheduled Caste or Scheduled Tribe in the Presidential notification applicable to various States and Union Territories. It is of course true that 5 seats have been earmarked for Pondicherry Scheduled Caste.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

However, those seats have not been confined to Scheduled Caste candidates of Pondicherry origin only. A person, who is considered as Scheduled Caste as per the Presidential notification applicable to any of the States or the Union Territories, is also entitled to the benefit of such category of Pondicherry Scheduled Caste, provided such candidate or his parents is residing continuously within the Union Territory of Pondicherry for at least 5 years or such candidate is the child of a Central/State Government servant posted and serving in the Union Territory of Pondicherry for a period of one year. The basic intention is to provide the benefit to the residents of Pondicherry or who are employed within Pondicherry in connection with the Central/State Government or Public Sector undertakings.

9. The question can be viewed from another angle. It is not disputed that so far as the Government of Pondicherry is concerned, even in respect of employment in connection with such Government, provisions have been made for reservation which had also been extended to migrant Scheduled Caste candidates. The validity and propriety of such provisions had been challenged successfully before the Central Administrative Tribunal and ultimately the matter had gone to the Supreme Court in (2005) 3 SCC 1 (S. PUSHPA AND OTHERS v. SIVACHANMUGHAVELU AND OTHERS), wherein the Supreme Court has observed as follows :-

> "9. The policy of the Government of India, whereunder all SC/ST candidates get benefit in the matter of appointment and admission in educational institutions controlled/administered by the Central Government has been reproduced in para 18 of the judgment in Marri Chandra Shekhar Rao and the relevant part thereof reads as under: (SCC p.145)
>
> > "I. Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the all-India services or admissions in the educational institutions controlled/administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). . . . " (Emphasis added)

10. In our opinion, the ratio of the said decision would be squarely applicable to the facts and circumstances of the present case. Even in Marri Chandra Shekar Rao's case it has been

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

well recognised that admissions in the Educational Institutions controlled / administered by the Central Government, Scheduled Castes and Scheduled Tribes are entitled to derive benefit irrespective of the State to which they belong.

11. In view of the above, it is difficult to accept the contention raised by Mr. Ajayakumar to the effect that the category "Pondicherry Scheduled Caste" must be construed as "Scheduled Caste candidates of Pondicherry origin" as per the Presidential notification for the Union Territory of Pondicherry.

12. Learned counsel has also raised certain contentions relating to percentage of reservation made. He has submitted that only 8 seats had been reserved for open Scheduled Caste, whereas 15% of 75 seats would be minimum 11.

13. Learned Additional Solicitor General has pointed out that out of 75 seats, 18 seats had been earmarked for Government of India nomination for which selection process was different and, therefore, out of balance 57 seats, as per the selection held by JIPMER, 15% came to 8 seats, and therefore, there is no illegality.

14. In our opinion, it is unnecessary to consider such controversy as it is obvious that even assuming three more seats would have been earmarked under open Scheduled Caste category, the present aggrieved candidate would not have been benefited. There is no dispute that the appellant in W.A.No.3386 of 2004 was also eligible to be considered under Clause 3.1(e) read with 3.5.1 and yet other selected candidates had secured more marks than him. Therefore, even if three more seats would have been ear-marked under Open Scheduled Caste category, the candidates who were selected on the basis of Clause 3.1(e) read with 3.5.1 would have secured higher ranking. The contention raised, therefore, would be of no avail to the appellants. Moreover, the prospectus was for the year 2004-2005 and the petitioner has already got admission in another college affiliated to the very same Pondicherry University. It is not his case that he should be considered for admission to the first year MBBS Course in this year, but his contention is that he should have been admitted last year in JIPMER.

15. It is of course true that one seat had been kept reserved, but reservation of that seat for the year 2004-2005 in first year MBBS Course would be of no avail. Such seats which were kept reserved for the year 2004-2005 cannot be added to the total number of seats of 75 for the current year. In that sense it is apparent that such seats have gone waste.

16. In course of hearing, it transpired that possibly such seats which were vacated during fist year of 2004-2005 in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JIPMER are also lying vacant in second year of MBBS Course of 2004-2005. The appellant in W.A.No.3311 of 2004 is studying in another college which is affiliated to the very same University, namely, Pondicherry University. It is therefore obvious that courses of study are the same.

17. In such view of the matter, it is observed that it would be open to the appellant in W.A.No.3311 of 2004 to file appropriate application before JIPMER, the University as well as the Medical Council of India seeking permission to get transfer from the existing college to JIPMER, if there is any vacancy in JIPMER in the subsequent year of MBBS Course which commenced in 2004-2005. Such application may be sympathetically considered in the light of the fact that the appellant being a member of Scheduled Caste obviously comes from socially and may be economically backward class and keeping a vacant seat in second or subsequent year of MBBS of 2004-2005 would be of no particular benefit to JIPMER or the University or the Medical Council of India.

18. In view of the above discussion, W.A.No.3386 of 2004 is dismissed and W.A.No.3311 of 2004 is disposed of subject to the observation made in paragraph 17. No costs. Consequently, the connected miscellaneous petitions are closed.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Director General of Health
   Services, New Delhi.
2. The Director, Jawaharalal Institute
   of Post Graduate Medical Education
   and Research, Pondicherry.
3. The Collector of Pondicherry,
   rep. by Collector, Revenue Department,
   Pondicherry.

+1cc to Senior Govt.Pleader Cum-senior Public prosecutor for Pondicherry (SR.41009)
+1cc to Mr.V.Ajayakumar,Advocate,(SR.41100)
+1cc to Mr.A.Sasidharan,Advocate,(SR.40987)
+2cc to Mr.M.T.Arunan,Advocate,(SR.41096)
AK(co)
rvr/17.10

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/